

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

<p>ADAPTIX, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>APPLE INC., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 5:13-cv-01776-PSG</p> <p><b>UPDATED DECLARATION OF MICHAEL B. POWELL IN SUPPORT OF MOTION FOR ADMINISTRATIVE RELIEF TO FILE DOCUMENTS UNDER SEAL PURSUANT TO LOCAL RULES 79- 5 AND 7-11</b></p>
<p>ADAPTIX, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>APPLE INC., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 5:13-cv-01777-PSG</p> <p><b>UPDATED DECLARATION OF MICHAEL B. POWELL IN SUPPORT OF MOTION FOR ADMINISTRATIVE RELIEF TO FILE DOCUMENTS UNDER SEAL PURSUANT TO LOCAL RULES 79- 5 AND 7-11</b></p>
<p>ADAPTIX, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>HTC CORP., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 5:13-cv-01778-PSG</p> <p><b>UPDATED DECLARATION OF MICHAEL B. POWELL IN SUPPORT OF MOTION FOR ADMINISTRATIVE RELIEF TO FILE DOCUMENTS UNDER SEAL PURSUANT TO LOCAL RULES 79- 5 AND 7-11</b></p>
<p>ADAPTIX, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>HTC CORP., et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 5:13-cv-01844-PSG</p> <p><b>UPDATED DECLARATION OF MICHAEL B. POWELL IN SUPPORT OF MOTION FOR ADMINISTRATIVE RELIEF TO FILE DOCUMENTS UNDER SEAL PURSUANT TO LOCAL RULES 79- 5 AND 7-11</b></p>

ADAPTIX, INC.,

Plaintiff,

v.

APPLE INC., et al.,

Defendants.

Case No. 5:13-cv-02023-PSG

**UPDATED DECLARATION OF  
MICHAEL B. POWELL IN SUPPORT OF  
MOTION FOR ADMINISTRATIVE  
RELIEF TO FILE DOCUMENTS UNDER  
SEAL PURSUANT TO LOCAL RULES 79-  
5 AND 7-11**

1 I, Michael B. Powell, declare as follows:

2 1. I am an attorney at the law firm of Cadwalader, Wickersham & Taft LLP. I am  
3 admitted *pro hac vice* in the Northern District of California for Case Nos. 5:13-cv-01777, -02023. I  
4 submit this declaration on behalf of AT&T Mobility LLC (“AT&T”). I have personal knowledge  
5 of the matters stated herein and, if called as a witness, I could and would testify competently and  
6 completely.

7 2. This declaration is filed in support of Defendants’ Motion to File Under Seal, filed  
8 concurrently herewith.

9 3. This declaration sets forth the reasons why good cause exists to seal portions of  
10 Defendants’ Motion for Attorneys’ Fees Pursuant to Exhibit 11 to 35 U.S.C. § 285 (“Defendants’  
11 Motion for Fees”), the Declaration of Craig Davis in Support of Defendants’ Motion for Fees  
12 (“Exhibit 11”), the Declaration of Christopher A. Hughes in support of Defendants’ Motion for  
13 Fees (the “Hughes Declaration”), and the Declaration of Bryant C. Boren in support of the same  
14 (the “Boren Declaration”).

15 4. According to the Ninth Circuit, parties seeking to seal documents in connection  
16 with a non-dispositive motion must only show “good cause” for doing so. *See, e.g., In re Midland*  
17 *Nat’l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012); *Pintos v.*  
18 *Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (“In light of the weaker public interest in  
19 nondispositive materials, we apply the ‘good cause’ standard when parties wish to keep them under  
20 seal.”); *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (“the public  
21 has less of a need for access to court records attached only to non-dispositive motions because those  
22 documents are often unrelated, or only tangentially related, to the underlying cause of action.”).  
23 Even under the more restrictive “compelling reasons” standard, applying Ninth Circuit law, the  
24 Federal Circuit has held that compelling reasons for sealing confidential information is found when  
25 the disclosure of the confidential business information would “cause competitive harm to a  
26 business,” including “pricing terms [and] royalty rates.” *Apple Inc. v. Samsung Elec. Co.*, 727 F.3d  
27 1214, 1221-22 (Fed. Cir. 2013).  
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1           5.       The blue-highlighted portions (2:1-2, 2:5-6, and 12:22-23) and the red-highlighted  
2 portions (13:5-7 and 13:23-24) of **Defendants’ Motion for Fees** discuss and describe confidential  
3 aspects of AT&T’s LTE network. In particular, these portions describe testing performed by third-  
4 parties related to AT&T’s network. Further, they describe the deployed settings of AT&T’s LTE  
5 network—technical information that is highly sensitive and confidential to AT&T. This Court has  
6 previously granted AT&T’s request to seal comparable material. (*See* D.I. 01777-434, 11/20/2014,  
7 Omnibus Order Regarding Motions to Seal (granting sealing request for material related to  
8 confidential aspects of AT&T’s LTE network)). For similar reasons, AT&T requests that the red-  
9 highlighted portions of Exhibit 11 be sealed.

10           6.       The red-highlighted portions (101:6-7, 101:9, 101:12, 101:14-17) of **Exhibit 11**  
11 discuss and describe confidential aspects of the operation of base stations in AT&T’s LTE network.  
12 In particular, these portions describe specific feedback reporting modes used by each of AT&T’s  
13 base station vendors, confidential details regarding the interaction of base stations and connected  
14 handsets in AT&T’s LTE network, and confidential aspects of internal base station settings. In  
15 addition, AT&T believes these portions of Exhibit 11 may be confidential to third-parties Ericsson  
16 and Alcatel-Lucent. This Court has previously granted AT&T’s request to seal comparable  
17 material. (*See* D.I. 01777-434, 11/20/2014, Omnibus Order Regarding Motions to Seal (granting  
18 sealing request for material related to confidential aspects of AT&T’s LTE network)). For similar  
19 reasons, AT&T requests that the red-highlighted portions of Exhibit 11 be sealed.

20           7.       The red-highlighted portions (5:10-15, 5:21-23) of the **Hughes Declaration** discuss  
21 and describe highly confidential material relating to AT&T’s payment of attorney’s fees over the  
22 course of this litigation. Accordingly, these portions disclose highly-sensitive information related  
23 to AT&T’s litigation costs, which would cause competitive harm to AT&T if disseminated to  
24 potential adverse litigants and AT&T’s competitors. *See Apple*, 727 F.3d at 1221-22, 1229  
25 (determining sensitive financial information to be sealable). Further, the public dissemination of  
26 these portions would competitively harm AT&T in financial transactions, such as licensing  
27 negotiations. *See id.* (determining material related to “pricing terms [and] royalty rates” to be  
28 sealable). This Court has previously granted AT&T’s request to seal comparable financial-related

1 material. (*See* D.I. 01777-470, 12/17/2014, Order Granting Administrative Motion to File Under  
2 Seal (granting AT&T's request to file sensitive financial information under seal)). In addition,  
3 these portions are confidential because of the attorney-client relationship between Cadwalader,  
4 Wickersham & Taft LLP and AT&T and because the highlighted items are not publicly known.  
5 For these reasons, AT&T requests that the specified red-highlighted portions of the Hughes  
6 Declaration be sealed.

7         8. In addition, the red-highlighted portion (2:26-3:2) of the **Hughes Declaration**  
8 discusses and describes the damages Adaptix sought against AT&T in this litigation. This portion  
9 is related to the calculation of royalty rates and, as such, would competitively harm AT&T in  
10 financial transactions, such as licensing negotiations, if publicly disclosed. *See Apple*, 727 F.3d at  
11 1221-22, 1229 (determining material related to "pricing terms [and] royalty rates" to be sealable).  
12 This Court has previously granted AT&T's request to seal comparable financial-related material.  
13 (*See* D.I. 01777-470, 12/17/2014, Order Granting Administrative Motion to File Under Seal  
14 (granting AT&T's request to file sensitive financial information under seal)). For similar reasons,  
15 AT&T requests that this red-highlighted portion of the Hughes Declaration be sealed.

16         9. The red-highlighted portions (3:22, 5:25, 6:2, 6:8-19) of the **Boren Declaration**  
17 discuss and describe highly confidential material relating to AT&T's payment of attorney's fees  
18 over the course of this litigation. Accordingly, these portions disclose highly-sensitive information  
19 related to AT&T's litigation costs, which would cause competitive harm to AT&T if disseminated  
20 to potential adverse litigants and AT&T's competitors. *See Apple*, 727 F.3d at 1221 (determining  
21 sensitive financial information to be sealable). Further, the public dissemination of these portions  
22 would competitively harm AT&T in financial transactions, such as licensing negotiations. *See id.*  
23 (determining material related to "pricing terms [and] royalty rates" to be sealable). This Court has  
24 previously granted AT&T's request to seal comparable financial-related material. (*See* D.I. 01777-  
25 470, 12/17/2014, Order Granting Administrative Motion to File Under Seal (granting AT&T's  
26 request to file sensitive financial information under seal)). In addition, these portions are  
27 confidential because of the attorney-client relationship between Baker Botts L.L.P. and AT&T and  
28 because the highlighted items are not publicly known. For these reasons, AT&T requests that these

1 specified red-highlighted portions of the Boren Declaration be sealed.

2           10. In addition, the red-highlighted portion (2:26-3:2) of the **Boren Declaration**  
3 discusses and describes the damages Adaptix sought against AT&T in this litigation. This portion  
4 is related to the calculation of royalty rates and, as such, would competitively harm AT&T in  
5 financial transactions, such as licensing negotiations, if publicly disclosed. *See Apple*, 727 F.3d at  
6 1221-22, 1229 (determining material related to “pricing terms [and] royalty rates” to be sealable).  
7 This Court has previously granted AT&T’s request to seal comparable financial-related material.  
8 (*See* D.I. 01777-470, 12/17/2014, Order Granting Administrative Motion to File Under Seal  
9 (granting AT&T’s request to file sensitive financial information under seal)). For similar reasons,  
10 AT&T requests that this red-highlighted portion of the Boren Declaration be sealed.

11           11. Furthermore, the red-highlighted portion (3:7-8) of the **Boren Declaration**  
12 discusses and describes confidential aspects of AT&T’s LTE network. In particular, this portion  
13 describes the deployed settings of AT&T’s LTE network—technical information that is highly  
14 sensitive and confidential to AT&T. This Court has previously granted AT&T’s request to seal  
15 comparable material. (*See* D.I. 01777-434, 11/20/2014, Omnibus Order Regarding Motions to Seal  
16 (granting sealing request for material related to confidential aspects of AT&T’s LTE network)).  
17 For similar reasons, AT&T requests that this red-highlighted portion of the Boren Declaration be  
18 sealed.

19           12. For the reasons stated herein, AT&T requests the Court seal the highlighted  
20 portions of the aforementioned documents. This request is narrowly tailored to seal only that  
21 material for which good cause to seal has been established.

22  
23           I declare under penalty of perjury under the laws of the United States that the foregoing is  
24 true and correct.

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26           Executed on this 18th day of February 2015 in New York, New York.  
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Respectfully submitted,

/s/ Michael B. Powell  
Michael B. Powell

**Cadwalader, Wickersham & Taft LLP**

Counsel for AT&T Mobility LLC